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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-929

Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY

The Department of Commerce (“the Department”) continues to determine that certain small diameter graphite electrodes (“SDGE”) are being exported from the United Kingdom (“U.K.”) to the United States by UK Carbon and Graphite Co., Ltd. (“UKCG”) in circumvention of the antidumping duty order on SDGE from the People’s Republic of China (“PRC”),¹ as provided in section 781(b) of the Tariff Act of 1930, as amended (“the Act”).

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-5848.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2012, the Department published in the *Federal Register* the affirmative preliminary determination that certain SDGE finished by UKCG from PRC-produced artificial

¹ See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 8775 (February 26, 2009) (“SDGE Order”).

graphite rod/unfinished SDGE component² inputs are exported to the United States in circumvention of the antidumping duty order on SDGE from the PRC, as provided in section 781(b) of the Act.³ Pursuant to section 781(e) of the Act, on June 8, 2012, the Department notified the U.S. International Trade Commission (“ITC”) of its affirmative preliminary determination of circumvention, in accordance with section 781(e) of the Act, and informed the ITC of its ability to request consultation with the Department regarding the possible inclusion of the products in question within the *SDGE Order* pursuant to section 781(e)(2) of the Act. On July 6, 2012, the ITC informed the Department that consultations pursuant to section 781(e)(2) of the Act were not necessary.

On June 20, 2012, UKCG, SGL Carbon LLC and Superior Graphite Co. (“Petitioners”), and the Government of the United Kingdom filed case briefs. On June 27, 2012, Petitioners and UKCG filed rebuttal briefs. On July 10, 2012, the Department held a public hearing, based on a timely filed request by UKCG.⁴

Scope of the Antidumping Duty Order

The merchandise covered by this order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining

² According to Petitioners, the unfinished merchandise in question is defined in UKCG’s submissions as, e.g., “graphite electrodes,” “rods,” “graphite billets,” “graphite shapes,” “synthetic graphite electrode rod,” and “re-machined graphite electrode.” Petitioners characterize these inputs as “unfinished SDGE,” whereas UKCG refers to them as “blanks” or “artificial graphite.” For customs purposes, these materials are, generally, classified under Harmonized Tariff Schedule (“HTS”) sub-heading 3801.10.00, defined as “Artificial Graphite; Colloidal or Semi-Colloidal Graphite; Preparations Based on Graphite or Other Carbon in the Form of Pastes, Blocks, Plates or Other Semi-Finished Goods.” For ease of reference, these materials are referred to as “unfinished SDGE components” or “artificial graphite rods” throughout this notice.

³ See *Small Diameter Graphite Electrodes from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405 (June 6, 2012) (“*Preliminary Determination*”).

⁴ See transcript entitled, “Public Hearing; In the Matter of: the Anti-circumvention Inquiry of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People’s Republic of China (A-570-929) (UKCG),” dated July 10, 2012 (“*Hearing Transcript*”).

system or any other type of joining system or hardware. The merchandise covered by this order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 8545.11.0000⁵ and 3801.10.⁶ The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Scope of the Anticircumvention Inquiry

The products covered by this inquiry are small diameter graphite electrodes produced by UKCG from PRC-manufactured artificial/synthetic graphite forms, of a size and shape (*e.g.*, blanks, rods, cylinders, billets, blocks, *etc.*) which requires additional machining processes (*i.e.*, tooling and shaping) to become a finished SDGE (or graphite pin joining system).⁷ The SDGE products in question are finished graphite electrodes manufactured by UKCG from PRC-

⁵ The scope described in the *SDGE Order* refers to the HTSUS subheading 8545.11.0000. We note that, starting in 2010, imports of SDGEs are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020.

⁶ HTSUS subheading 3801.10 is added to the scope of the order based on a determination in the instant anticircumvention proceeding. See Summary of Analysis of Statutory Provisions section, below, and the accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, Re: “Anticircumvention Inquiry Regarding the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People’s Republic of China: Issues and Decision Memorandum for the Final Determination of the Anticircumvention Inquiry” (“Decision Memorandum”), dated July 31, 2012 at Comment 6.

⁷ As noted above, these materials are referred to as “unfinished SDGE components” or “artificial graphite rods” throughout this notice.

originated artificial graphite rod/unfinished SDGE components. While UKCG argues that the SDGE it produces and exports to the United States are of U.K. origin under U.K. law, the focus and intent of this inquiry is to determine whether artificial/synthetic graphite forms 1) manufactured in the PRC; 2) exported to the United Kingdom for processing/machining (finishing); and 3) re-exported to the United States as U.K. origin merchandise constitute circumvention of the *SDGE Order* under 781(b) of the Act.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this proceeding are addressed in the Decision Memorandum and hereby adopted by this notice. A list of the issues which the parties raised and to which the Department responds in the Decision Memorandum is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Affirmative Final Determination of Circumvention

For the final determination, we continue to rely on the statutory criteria that we considered in making our *Preliminary Determination*.⁸ Based on our review of the record evidence and our analysis of the comments received, the Department continues to find that certain SDGE finished by UKCG from PRC-produced artificial graphite rod/unfinished SDGE component inputs are exported to the United States in circumvention of the antidumping duty

⁸ See *Preliminary Determination*, 77 FR at 33409.

order on SDGE from the PRC. For a complete discussion of the Department's analysis, *see* the accompanying Decision Memorandum.

Summary of Analysis of Statutory Provisions

(A) Whether Merchandise Imported Into The United States Is Of The Same Class Or Kind As Merchandise That Is Subject To The SDGE Order

As noted in the *Preliminary Determination*, the finished products, as sold by UKCG to the United States, are identical to those covered by the *SDGE Order*.⁹ No interested party to this proceeding has contested this fact during the course of the inquiry. As such, we continue to find that the finished SDGE products exported to the United States by UKCG are of the same class or kind as other merchandise that is subject to the *SDGE Order*.

(B) Whether, Before Importation Into The United States, Such Imported Merchandise Is Completed Or Assembled In A Third Country From Merchandise Which Is Subject To The Order Or Produced In The Foreign Country That Is Subject To The Order

Pursuant to section 781(b)(1)(B) of the Act, and consistent with our findings in the *Preliminary Determination*, we continue to find that the totality of the sourcing/procurement information and corresponding sales documentation on record clearly demonstrate that the inputs in question are produced in the foreign country that is subject to the *SDGE Order*.¹⁰

Additionally, as discussed at length in the accompanying Decision Memorandum at Comment 1, the Department has analyzed the arguments with respect to the in-scope nature of UKCG's artificial graphite rod/unfinished SDGE component inputs and continues to find that the "rod" inputs constitute unfinished SDGE explicitly included within the scope of the *SDGE Order*.¹¹ As a result, the Department finds that certain subject merchandise may be properly

⁹ *See Preliminary Determination*, 77 FR at 33410.

¹⁰ *See id.*, 77 FR at 33410-11. *See also* Memorandum from the Department entitled, "Anti-Circumvention Inquiry Regarding the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Determination Analysis Memorandum of U.K. Carbon and Graphite Co., Ltd.," dated May 30, 2012 ("Preliminary Analysis Memorandum") at 5-8 and Attachment II.

¹¹ *See* Decision Memorandum at Comment 1.

categorized under HTSUS subheading 3801.10. Because HTSUS numbers are included in the scope language for convenience and customs purposes, we are adding this HTS subheading to the scope language of the *SDGE Order* to aid U.S. Customs and Border Protection (“CBP”) by clarifying that products categorized under the HTSUS 3801.10 category, as imported, which otherwise fit the narrative description of unfinished products covered by the *SDGE Order*, should be considered merchandise subject to the order.¹²

(C) Whether The Process Of Assembly Or Completion In The Third Country Is Minor Or Insignificant

Pursuant to section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion is minor or insignificant.

These criteria are:

781(b)(2)(A): the level of investment in the third country;

781(b)(2)(B): the level of research and development (“R&D”) in the third country;

781(b)(2)(C): the nature of the production process in the third country;

781(b)(2)(D): the extent of the production facilities in the third country; and

781(b)(2)(E): whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States.

The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.¹³ Accordingly, it is the Department’s practice to evaluate each of the factors as they exist in the United States or foreign country depending on the particular anticircumvention

¹² See Decision Memorandum at Comment 6.

¹³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (“SAA”) at 893.

inquiry.¹⁴ In this anticircumvention inquiry, based on the record, we have considered and evaluated each statutory criterion and all factors in determining whether the process of converting the PRC-sourced artificial graphite rod/unfinished SDGE component inputs in the U.K. was minor or insignificant, in accordance with section 781(b)(2) of the Act, consistent with our analysis in prior anticircumvention inquiries.¹⁵

Analysis of 781(b)(2)(A),(B),(C), & (D): The Levels of Investment, R&D, The Nature of Production Processes, and Extent of Production Facilities in the United Kingdom

Pursuant to sections 781(b)(2)(A)-(D) of the Act, the Department continues to find, consistent with our *Preliminary Determination*, that the information on record with respect to UKCG's investment, R&D, production processes and production facilities continues to support the conclusion that the process of assembly or completion occurring in the United Kingdom is minor or insignificant in comparison to the totality of the production of subject merchandise.

Analysis of 781(b)(2)(E): Whether the Value of the Processing Performed in the United Kingdom Represents a Small Proportion of the Value of the Merchandise Imported into the United States

For the *Preliminary Determination*, the Department utilized a quantitative analysis to determine the proportion of UKCG's further processing value by comparing UKCG's further processing costs to the actual value of the merchandise exported to the United States during the period of review (*i.e.*, U.S. price) and preliminarily found that the UKCG's value-added

¹⁴ See *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008) at 57592.

¹⁵ See, e.g., *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571 (August 6, 2003) ("*Pasta Circumvention Prelim*"), unchanged in *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003) ("*Pasta Circumvention Final*"); and *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determination of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336, 40347-48 (July 26, 1999) (explaining that Congress has directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components and that any attempt to establish a numerical standard would be contrary to the intent of Congress).

comprised only a small proportion of the total export value. The Department concluded that this quantitative finding lent additional support to the qualitative finding and that, pursuant to section 781(b)(2)(E) of the Act, the value of UKCG's processing represents a small proportion of the value of the merchandise sold in the United States.¹⁶

For this final determination, the Department agrees with UKCG that the methodology we used for the analysis under section 781(b)(2)(E) of the Act for *Preliminary Determination* warrants modification, but only to the extent that our measurement of the value-added in the United Kingdom did not properly account for profit (as well as selling, general, and administrative ("SG&A") expenses and interest expenses) in the numerator of the calculation. We find that the inclusion of an amount for SG&A, interest, and profit would help to better reflect the value-added to the finished product in the United Kingdom. However, we do not agree with UKCG's suggested methodology. Instead, we have amended the *Preliminary Determination* calculation so that UKCG's profit margin and SG&A and interest ratios are added to the reported further manufacturing cost.¹⁷ While the revised value-added figure increases the value-added figure used in the *Preliminary Determination*, the Department finds that this figure still represents a small proportion of the overall sales value as exported to the United States. As a result, we continue to find that this criterion supports finding that the process of completion in the UK is minor.¹⁸

¹⁶ See *Preliminary Determination* 77 FR at 33413-15. See also Preliminary Analysis Memorandum at 16-18 and Attachment VI.

¹⁷ See Memorandum from the Department entitled, "Anticircumvention Inquiry Regarding the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Final Determination Analysis Memorandum of U.K. Carbon and Graphite Co., Ltd.," dated July 31, 2012 ("Final Analysis Memorandum").

¹⁸ Information about the value-added figure is business proprietary. See Final Analysis Memorandum for exact values. See also "Overall Analysis" section, below, and Decision Memorandum at Comment 3.

Overall Analysis of Section 781(b)(1)(C) of the Act (i.e., Sections 781(b)(2)(A)-(E) of the Act)

As discussed above and in the *Preliminary Determination*, it is clear from the legislative history that an analysis of possible circumvention should not be based solely on a quantitative analysis, but rather should examine the value added in qualitative terms as well.¹⁹ The SAA also explains that no single factor listed in section 781(b)(2) of the Act will be controlling.

Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the United States or foreign country depending on the particular circumvention scenario. Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each circumvention inquiry.

In this anticircumvention inquiry, we based our analysis on both qualitative and quantitative factors in determining whether the process of finishing the SDGE in the United Kingdom was minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior circumvention inquiries.²⁰ Based on the above analysis, we determine that the process of finishing performed by UKCG in the United Kingdom is minor or insignificant primarily because we determine that the nature of the processing is minor when compared to the production of SDGE from raw materials and the value of the processing performed by UKCG in the United Kingdom represents a small proportion of the value of the merchandise imported into the United States. This qualitative determination is based on our analysis with respect to sections 781(b)(2)(A),(B),(C), and (D) of the Act (as laid out in the *Preliminary Determination* and summarized above), as well as our finding that the input material itself constitutes merchandise subject to the SDGE Order. As stated in the *Preliminary Determination*, “while the Department believes that this qualitative analysis is

¹⁹ See *Preliminary Determination* 77 FR at 33413, citing to SAA at 893 (1994).

²⁰ See, e.g., *Pasta Circumvention Prelim* 68 FR at 46574 (unchanged in *Pasta Circumvention Final*).

sufficient to determine whether the value of processing in the third country constitutes a small portion of the value of the merchandise exported to the United States, the Department has obtained the information necessary to {quantitatively} evaluate the proportion of UKCG's processing."²¹ Thus, the quantitative analysis in the *Preliminary Determination* was issued in support of the qualitative finding based on the availability of the relevant data, but the Department plainly noted that the qualitative finding of relatively insignificant value added was, by itself, sufficient to fulfill the analysis required pursuant to section 781(b)(2)(E) of the Act. Although the Department has amended the methodology used to conduct this quantitative analysis for the instant final determination, as noted above, we find that the resultant values continue to indicate that the value added in the United Kingdom represents a small proportion of the overall sales value as exported to the United States. Further, we continue to find that the qualitative determination is itself sufficient and determinative to address the value-added criteria under the statute and that the corresponding quantitative analysis supports the Department's qualitative determination on this issue.²²

(D) Whether the Value of the Merchandise Produced in the Foreign Country to which the Order Applies Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Because key elements of the Department's analysis under section 781(b)(1)(D) of the Act necessitate obtaining a value for an NME input, the Department determined that an analysis of UKCG's input costs falls under the purview of the Department's NME methodology and, therefore, utilized a surrogate value ("SV") to value UKCG's PRC-sourced artificial graphite rod/unfinished SDGE component inputs, consistent with both section 773(c)(1) of the Act as

²¹ See *Preliminary Determination* at 33413.

²² See Decision Memorandum at Comment 3. See also Final Analysis Memorandum.

well as the Department's past practice.²³ As a result, the Department determined that the appropriate calculation required by section 781(b)(1)(D) of the Act expresses the SV for the artificial graphite rod/unfinished SDGE component inputs in question as a percentage of UKCG's reported total sales value and found that the PRC-produced merchandise represents a significant percentage of the sales value of UKCG's U.S. exports of finished merchandise.²⁴ A full discussion of the propriety of utilizing the Department's SV methodology with respect to the valuation of UKCG's inputs is provided in Comment 2 of the accompanying Decision Memorandum.

Other Factors to Consider

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act instructs the Department to take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether affiliation exists between the manufacturer or exporter of the merchandise in the country subject to the order and the person who uses the merchandise to assemble or complete in the third country the merchandise that is exported to the United States; and (C) whether imports into the third country of the merchandise described in section 781(b)(1)(B) of the Act have increased since the initiation of the original investigation. In the *Preliminary Determination* the Department found that:

A) Record information demonstrated that PRC exports of SDGE to the United States have decreased significantly whereas U.K. exports of SDGE to the United States, UKCG's exports

²³ See *Preliminary Determination* 77 FR at 33407-09, citing to, e.g., *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007 (May 10, 2011) ("*Hangers Anticircumvention Prelim*") at 27008, unchanged in *Steel Wire Garment Hangers From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011) ("*Hangers Anticircumvention Final*").

²⁴ See *Preliminary Determination* 77 FR at 33415. See also Preliminary Analysis Memo for a discussion of the exact values used, as this information is business proprietary.

of SDGE to the United States, and UKCG's sourcing of relevant inputs from the PRC, have increased since the initiation of the less-than-fair-value ("LTFV") investigation. These patterns of trade support a finding that circumvention has occurred.²⁵

B) UKCG is not affiliated with any PRC-producers of artificial graphite rod/unfinished SDGE component inputs.²⁶

C) In addition to the aforementioned increase in UKCG's sourcing of relevant inputs from the PRC, PRC exports of artificial graphite to the United Kingdom have also increased significantly since the initiation of the LTFV investigation.²⁷

No party to this proceeding has challenged any of the aforementioned findings since the issuance of the *Preliminary Determination*. The Department continues to find that UKCG is not affiliated with any of its PRC-producers of artificial graphite rod/unfinished SDGE component inputs. However, the totality of the pattern of trade data – which shows an increase with respect to UKCG's importation of artificial graphite rod/unfinished SDGE component inputs from the PRC and exports of finished SDGE to the United States from the United Kingdom, an increase of artificial graphite imports into the United Kingdom on the whole, and a corresponding decrease in finished SDGE exported to the United States from the PRC – supports an affirmative determination of circumvention.

Summary of Statutory Analysis

We find that UKCG has circumvented the *SDGE Order* in accordance with sections 781(b)(1) and (2) of the Act. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we find that the merchandise sold in the United States is identical to merchandise that is subject to the *SDGE*

²⁵ See *Preliminary Determination* 77 FR at 33416-17. See also Preliminary Analysis Memorandum at 20-22 and Attachments VII-XII

²⁶ See *Preliminary Determination* 77 FR at 33417.

²⁷ See *Preliminary Determination* 77 FR at 33417. See also Preliminary Analysis Memorandum at 23 and Attachments VII-XII.

Order and was completed in the United Kingdom from merchandise which is: a) covered by the explicit language of the scope of the *SDGE Order*, and b) produced in the PRC, the country to which the *SDGE Order* applies. Additionally, pursuant to section 781(b)(1)(C) of the Act, we find the process of completion in the United Kingdom to be minor and insignificant based on each facet of the analysis under section 781(b)(2) of the Act. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing, and an affirmative finding of an increase in imports of artificial graphite/unfinished SDGE into the United Kingdom from the PRC since the initiation of the initial LTFV investigation, we conclude that action is appropriate to prevent circumvention of the *SDGE Order* pursuant to 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to find that, during the period of time examined, there was circumvention of the *SDGE Order* as a result of UKCG's processing/machining of the PRC-origin artificial graphite/unfinished SDGE components to finished SDGE in the United Kingdom, as discussed above.

Continuation of Suspension of Liquidation

Based on the record evidence, the Department has determined that UKCG is able to provide documentation to its U.S. importers that identifies the input supplier for each SDGE UKCG sold in the United States.²⁸ As a result, the Department is requiring UKCG and its importers to prepare and maintain certifications regarding the supplier.²⁹ Additionally, for all merchandise exported by UKCG where the supplier was a PRC-entity, the Department will direct CBP to require cash deposits at the rate established for the PRC supplier if that supplier

²⁸ See *Preliminary Determination* 77 FR at 33417-18.

²⁹ See *id.* 77 FR at 33417-18 and the certifications provided at 77 FR 33419-33420. See also Appendices II, III, IV, and V to this notice.

has its own rate or, alternatively, at the PRC-wide rate of 159.64 percent if the PRC supplier does not have its own rate or if the importer cannot identify the supplier.

The Department continues to find that its preliminary cash deposit instructions are fully consistent with the Department's obligations under section 781(b) of the Act.³⁰ The Department concludes, pursuant to Section 781(b) of the Act, that SDGE finished by UKCG from PRC-produced inputs covered under the narrative description of the scope of the *SDGE Order*, are being exported to the United States in circumvention of the *SDGE Order*, and that the appropriate means of addressing that circumvention is to collect cash deposits on all merchandise meeting that description. As such, we find it appropriate and consistent with past practice to instruct CBP to suspend liquidation and collect cash deposits on all unliquidated entries of SDGE produced by UKCG from PRC-manufactured unfinished SDGE inputs at the rate applicable to the relevant PRC-manufacturer, including the PRC-wide entity if applicable.³¹ In requiring that CBP collect cash deposits on UKCG's exports of SDGE found to be in circumvention of the antidumping order as appropriate, the Department is making no final determination of UKCG's dumping duty liability at this time.³²

Accordingly, the Department will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties at the applicable rate on unliquidated entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the anticircumvention inquiry. Where the importer can demonstrate that the primary input material was produced by a company

³⁰ See Decision Memorandum at Comment 5.

³¹ See *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 47551 (August 5, 2011), and accompanying Issues and Decision Memorandum at Comments 4 and 5. For a full discussion of this issue, see the accompanying Decision Memorandum at Comment 5.

³² See Decision Memorandum at Comment 5.

that has a separate rate, CBP will collect that company's cash deposit rate. Where the importer can demonstrate that the SDGE at issue was produced from reclaimed/reconditioned electrode inputs³³ or artificial graphite rod/unfinished SDGE component inputs sourced from a third country producer, CBP should not suspend those entries or collect AD duties on those entries. For all other entries of merchandise exported by UKCG, CBP will require a cash deposit equal to the PRC-wide rate of 159.64 percent.

For all entries of finished SDGE produced from artificial graphite rod/unfinished SDGE component inputs subject to the scope of this anticircumvention proceeding which UKCG believes should be assessed at a rate other than the PRC-wide rate, UKCG is required to furnish its customers/importers with a certification identifying, as appropriate, the manufacturer/exporter of the primary input into the SDGE it processes in the U.K. prior to exportation to the United States. For all entries of SDGE produced from inputs not subject to the scope of this anticircumvention proceeding (*i.e.*, SDGE produced from reclaimed/reconditioned inputs or inputs produced in a third country), UKCG is required to furnish its customers/importers with a certification identifying the supplier or producer (as appropriate) of the primary input into the SDGE it processes in the U.K. prior to exportation to the United States.³⁴ Importers are also required to sign and maintain certifications for these types of entries. The certification formats are provided in Appendices II, III, IV, and V to this notice.³⁵ The importer will be required to retain each certificate for individual entries for the later of: 1) a period of five years from the

³³ As noted in the *Preliminary Determination* 77 FR at 33418, UKCG purchases broken/cracked or otherwise unusable electrodes from sources in various non-PRC countries, refurbishes them, and re-sells them for use as finished electrodes. The broken, cracked, or otherwise unusable electrode inputs sourced by UKCG are "reclaimed" electrodes, whereas the resulting finished product is a "remanufactured," "remachined," or "reconditioned" electrode. For ease of reference, these products are referred to as "reclaimed/reconditioned" electrodes.

³⁴ See Decision Memorandum at Comment 4.

³⁵ The certification language has been slightly modified from that proposed in the *Preliminary Determination* to reflect the results of this final determination. See Decision Memorandum at Comment 4.

date of entry or 2) a period of three years after the conclusion of any antidumping duty litigation regarding such entries. It is the importer's responsibility to accurately declare to CBP the appropriate antidumping duty rate (or that no antidumping duty applies) for each entry.

Accordingly, the Department will instruct CBP to: i) require cash deposits at the rate established for the PRC supplier if that supplier has its own rate; ii) require cash deposits at the PRC-wide rate of 159.64 percent if the PRC supplier does not have its own rate or if the importer cannot identify the supplier. If the importer is able to demonstrate through the above-referenced certification process that the source of the artificial graphite rod/unfinished SDGE component inputs used in the production of finished SDGE imported from UKCG is not of PRC-origin or the finished SDGE is produced from reclaimed/reconditioned inputs, then no suspension of liquidation or cash deposit is required.³⁶ These instructions will apply to entries of SDGE produced and/or exported by UKCG that were entered, or withdrawn from warehouse, for consumption on or after March 18, 2011, the date of initiation of the anticircumvention inquiry. For unliquidated entries made prior to March 18, 2011, UKCG will not be required to provide the above-noted documentation to the importer. The importer will be required to provide the documentation to CBP within the time frame established by CBP. Consistent with past practice the Department has determined that a third-country antidumping duties case number for the

³⁶ The exporter-supplied certification will serve as the initial demonstration supporting the importer's claim regarding which antidumping duty rate (or that no antidumping duty rate) is applicable. However, should CPB determine that further demonstration is warranted, it may seek additional documentation from the importer pursuant to 19 CFR 163.6(a) and other applicable regulations and statutory authority. Under 19 CFR 163.6(a), CBP may require the production of entry records from any party required to maintain such records as defined in 19 CFR 163.2(a). 19 CFR 163.1(a)(2)(vii) defines such records to include any information made or normally kept in the ordinary course of business that pertains to an activity "required to be undertaken pursuant to the laws or regulations administered by Customs," which would include the proper assessment of antidumping duties. As such, for the purpose of demonstrating that a rate other than the PRC-wide rate should be assessed to entries subject to this anticircumvention proceeding, UKCG should be prepared to provide to its importers, where applicable, documentation to substantiate the supplier claim made on the UKCG certification to the importer. Thus, if CBP should determine further demonstration is necessary and request supporting documentation from the importer, UKCG will be responsible for providing to the importer additional documentation pursuant to 19 CFR 163.6(a) to substantiate the certification.

United Kingdom is necessary as part of this determination for importers to identify merchandise as subject merchandise, and to ensure that CBP can collect antidumping duties on subject SDGEs that are processed in and exported from the United Kingdom.³⁷

Notification to Interested Parties

This notice serves as the only reminder to parties subject to the administrative protective order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

Paul Piquado
Assistant Secretary
for Import Administration

Dated: July 31, 2012

³⁷ See, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906, 14907 (March 18, 2011) (noting that “the Department has coordinated with CBP to resolve issues arising from differences between the Department's and CBP's respective country-of-origin classifications and from technical restrictions in CBP's electronic filing systems. As a result, the Department has added several case numbers to the Case Reference file within the Automated Commercial Environment to ensure that requisite entries are and can be properly claimed as scope merchandise.”).

Appendix I

DISCUSSION OF THE ISSUES:

- Comment 1: Whether “Rods” Are Covered Under the Scope of the Order
- Comment 2: Use of Ukrainian Surrogate Values to Value Artificial Graphite Rod/Unfinished SDGE Component Inputs
- Comment 3: Value-Added Methodology
- Comment 4: Whether to Include Reconditioned Products in the Scope of the Anticircumvention Inquiry
- Comment 5: Cash Deposit and Assessment of AD Duties
- Comment 6: Inclusion of HTSUS Subheading 3801.10 in the Scope of the Order
- Comment 7: Clarification that Graphitization Confers Country of Origin

Appendix II

Certification of UK Carbon and Graphite Co., Ltd. for SDGE Exports Produced From Reclaimed/Reconditioned Electrode Inputs Or From Non-Chinese-Origin Artificial Graphite Rod/Unfinished SDGE Component Inputs

I hereby certify that I am an official of UK Carbon and Graphite Co., Ltd. (“UKCG”) and that that the small diameter graphite electrode products processed by UKCG in the United Kingdom into the small diameter graphite electrodes included within this shipment pursuant to Invoice numbers³⁸:

- Invoice
- Invoice...

were produced from reclaimed/reconditioned electrode inputs or from non Chinese-origin artificial graphite rod/unfinished SDGE component inputs.

By signing this certificate, UKCG also hereby agrees to:

- Maintain sufficient documentation supporting the above statement for all reclaimed/reconditioned electrode inputs or non Chinese-origin artificial graphite rod/unfinished SDGE component inputs used to produce the exported small diameter graphite electrode products.
- Provide such documentation to the importer of the merchandise subject to this certification if required by U.S. Customs and Border Protection (“CBP”). UKCG is required to maintain all such documentation for individual entries until the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- Submit to verification by the U.S. Government of the underlying documentation supporting the above statement pursuant to the administration of an antidumping duty proceeding covering small diameter graphite electrodes from the People’s Republic of China.
- Provide this certification to the U.S. customer/importer at the time of shipment.

UKCG acknowledges that failure to submit to verification of the documentation by the U.S. Government may result in immediate revocation of certification rights and under such circumstances the importer of the merchandise will be required to post a cash deposit equal to the PRC-wide entity rate on all entries of small diameter graphite electrode products sourced from UKCG. In addition, if the Department of Commerce (“Commerce”) identifies any misrepresentation or inconsistencies regarding the certifications, UKCG recognizes that the matter may be reported to CBP by Commerce for possible enforcement action.

³⁸ If an individual invoice is representative of merchandise produced from both Chinese-origin artificial graphite rod inputs, as well as non-subject inputs, UKCG shall identify the non-subject merchandise in this certification, and will provide a companion certification identifying the subject merchandise based on the certification provided below in Appendix IV.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Appendix III

**Certification of U.S. Importer for SDGE Exports Produced From
Reclaimed/Reconditioned Electrode Inputs Or From Non-Chinese-Origin Artificial
Graphite Rod/Unfinished SDGE Component Inputs**

I hereby certify that I am an official of {insert name of company importing small diameter graphite electrodes (“SDGE”) from UK Carbon and Graphite Co., Ltd. (“UKCG”),} and that, to the best of my knowledge, the SDGE imported under the following entry numbers was produced from either reclaimed/reconditioned electrode inputs or from non Chinese-origin artificial graphite rod/unfinished SDGE component inputs:

- Entry # _____ Date of Entry: _____
- Entry # _____ Date of Entry: ...

By signing this certificate, the importer stipulates its understanding that:

- It is the importer’s responsibility to accurately declare this entry upon importation to U.S. Customs and Border Protection (“CBP”).
- The importer of the above certified merchandise is required to maintain this certification for individual entries for the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- The importer will be required to produce this certification and the exporter’s certification upon the request of CBP.
- The importer may be required to produce additional documentation, sourced from UKCG, to substantiate the supplier claim made in the certification in response to a request from CBP.
- Should further investigation prove this certification to be false, CBP may take appropriate action to penalize the importer. As such, it is the importer’s responsibility to provide any documentation from UKCG that may be needed to substantiate the above certified claims.
- The importer is required to complete this certification on the date of entry.
- If the importer is not able to demonstrate that the source of the input used in the production of finished SDGE imported from UKCG is a reclaimed/reconditioned electrode or a non Chinese-origin artificial graphite rod/unfinished SDGE component, the imports are considered subject to the SDGE Order.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Appendix IV

Certification of UK Carbon and Graphite Co., Ltd. for Exports of PRC-Origin SDGE Sourced from PRC-Producers

I hereby certify that I am an official of UK Carbon and Graphite Co., Ltd. (“UKCG”) and that the small diameter graphite electrode (“SDGE”) products processed by UKCG in the United Kingdom into the small diameter graphite electrodes included within this shipment pursuant to Invoice numbers³⁹:

- Invoice
- Invoice...

were produced from Chinese-origin artificial graphite rod/unfinished SDGE component inputs subject to the antidumping duty order on small diameter graphite electrodes from the People’s Republic of China (“PRC”) sourced from _____ (Name of PRC Manufacturer, or if the exporter is other than the manufacturer, the PRC exporter)⁴⁰

By signing this certificate, UKCG also hereby agrees to:

- Maintain sufficient documentation supporting the above statement for all Chinese-origin artificial graphite rod/unfinished SDGE component inputs used to produce the exported small diameter graphite electrode products.
- Provide such documentation to the importer of the merchandise subject to this certification if required by U.S. Customs and Border Protection (CBP). UKCG is required to maintain all such documentation for individual entries until the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- Submit to verification by the U.S. Government of the underlying documentation supporting the above statement pursuant to the administration of an antidumping duty proceeding covering small diameter graphite electrodes from the People’s Republic of China.
- Provide this certification to the U.S. customer/importer at the time of shipment.

UKCG acknowledges that failure to submit to verification of the documentation by the U.S. government may result in immediate revocation of certification rights and under such circumstances the importer of the merchandise will be required to post a cash deposit equal to the China-wide entity rate on all entries of small diameter graphite electrode products sourced from UKCG. In addition, if the Department of Commerce (“Commerce”) identifies any misrepresentation or inconsistencies regarding the certifications, UKCG recognizes that the matter may be reported to the U.S. Customs and Border Protection by Commerce for possible enforcement action.

³⁹ If an individual invoice reflects the sale of subject and non-subject merchandise, UKCG shall provide to the customer/importer two certifications (and relevant supporting documentation) identifying the respective subject and non-subject merchandise, as discussed above.

⁴⁰ If there is more than one exporter/manufacturer, identify the exporter/manufacturer with each product from each invoice.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Appendix V

Certification of U.S. Importer for PRC SDGE Exports

I hereby certify that I am an official of {insert name of company importing small diameter graphite electrodes (“SDGE”) from UKCG,} and that, to the best of my knowledge, the SDGE imported under the following entry numbers was produced from PRC-origin artificial graphite rod/unfinished SDGE component inputs:

- | | |
|-----------|--------------------|
| • Entry # | Date of Entry: |
| • Entry # | Date of Entry: ... |

By signing this certificate, the importer stipulates its understanding that:

- It is the importer’s responsibility to accurately declare this entry upon importation to U.S. Customs and Border Protection (“CBP”) as an entry subject to antidumping duties and to accurately report the cash deposit rate applicable to these imports.
- The importer of the above certified merchandise is required to maintain this certification for individual entries for the later of 1) a period of five years from the date of entry or 2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.
- The importer will be required to produce this certification and UKCG’s certification upon the request of CBP.
- The importer may be required to produce additional documentation, sourced from UKCG, to substantiate the supplier claim made in the certification in response to a request from CBP.
- Should further investigation prove this certification to be false, CBP may take appropriate action to penalize the importer. As such, it is the importer’s responsibility to provide any documentation from UKCG that may be needed to substantiate the above certified claims.
- The importer is required to complete this certification on the date of entry.
- For entries of SDGEs from UKCG which the importer believes should be assessed at a rate other than the PRC-wide rate, the importer must have a certification from UKCG identifying the supplier of the artificial graphite rod/unfinished SDGE component inputs subject to the antidumping duty order on SDGEs from the PRC.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

